



(A Brief) Overview of Property Tax Exemptions

Mike Duffy, Staff Attorney

(writing credit to David Marusarz, Staff Attorney)

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Agenda

- Legal basis for exemptions
- Applying for exemptions
- Changes in ownership or use
- Granting an exemption
- Additional 2014 Legislative Changes
- *Oaken Bucket* decision
- Nursing homes



Disclaimer

This presentation offers an overview of some property tax exemption topics and is not meant to be a substitute for reading the law.



The Legal Basis for Exemptions

Article 10, Section 1 of the Indiana Constitution permits the Legislature to exempt certain classes of property from property taxation.

IC 6-1.1-10 contains most of the exemptions available, but exemptions may be found throughout the Code.

Exemption procedures are found in IC 6-1.1-11. The procedures include application requirements, deadlines, et cetera.



A privilege, not a right...

An exemption is a privilege which may be waived by a person who owns tangible property that would qualify for the exemption. IC 6-1.1-11-1.

Burden is on the applicant to show that the predominant part of the property claimed to be exempt is substantially related to the exercise or performance of the applicant's exempt purpose. IC 6-1.1-11-3(d).



Let's be precise, here...

Exemption → property is not taxable (to whatever extent)

- E.g., churches, charitable organizations
- IC 6-1.1-10; IC 6-1.1-11

Deduction → reduces the taxable AV of a property by a fixed dollar amount

- E.g., Homestead, Mortgage, Over 65, Disabled Veteran
- IC 6-1.1-12

Credit → reduces the net tax bill by a designated percentage or prevents a tax bill from exceeding a certain percentage

- Circuit Breaker, Over 65, LOIT Homestead



Applying for an Exemption

Application (Form 136) must be filed with the county assessor. For an assessment date in a year **beginning after December 31, 2015, the deadline to submit a property tax exemption application to the county assessor is April 1 of the year containing the assessment date. If the PTABOA denies the application, it has no later than April 25 to provide notice to the taxpayer.**

However, the exemption application is not required if the exempt property is owned by the United States, the state, an agency of this state, or a political subdivision (as defined in IC 36-1-2-13). This exception applies only when the property is used, and in the case of real property occupied, by the owner.



Applying for an Exemption

IC 6-1.1-11-4(d):

Ordinarily, the exemption must be re-filed every even year unless:

(1) the exempt property is:

- (A) tangible property used for religious purposes described in IC 6-1.1-10-21;
- (B) tangible property owned by a church or religious society used for educational purposes described in IC 6-1.1-10-16;
- (C) other tangible property owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes described in IC 6-1.1-10-16; or
- (D) other tangible property owned by a fraternity or sorority (as defined in IC 6-1.1-10-24).

- (2) the exemption application was filed properly at least once for a religious use under IC 6-1.1-10-21, an educational, literary, scientific, religious, or charitable use under IC 6-1.1-10-16, or use by a fraternity or sorority under IC 6-1.1-10-24; and
- (3) the property continues to meet the requirements for an exemption under IC 6-1.1-10-16, IC 6-1.1-10-21, or IC 6-1.1-10-24.



Applying for an Exemption

Question: Why are some properties automatically exempt from taxation, and why do some have to fill out Form 136?

Answer: Properties that are exempt by law, such as those owned by federal, state, or local units of government are exempt and do not require an Exemption Application. Other entities, that are exempt by filing (e.g., those that are owned, used, or occupied for educational, literary, scientific, religious, or charitable purposes) must file and receive approval for their Exemption Application. See IC 6-1.1-11-4.



Changes in Ownership or Use

- If, after an assessment date, an exempt property is transferred or its use is changed resulting in its ineligibility for an exemption under IC 6-1.1-10, the county assessor must terminate the exemption for that assessment date. However, if the property remains eligible for an exemption under IC 6-1.1-10 following the transfer or change in use, the exemption must be left in place for that assessment date.
- Example: *If a church receives a property tax exemption on a parcel on March 1 under IC 6-1.1- 10, it sells the property after March 1, and the property no longer qualifies for an exemption under IC 6-1.1-10 following the sale, the exemption is terminated for that assessment date.*



Changes in Ownership or Use

- For the following assessment date, the person that obtained the exemption or the current owner of the property, as applicable, must, except as otherwise provided, file a certified application in duplicate with the county assessor of the county in which the property that is the subject of the exemption is located. In all cases, the person that obtained the exemption or the current owner of the property must notify (using Form 136-CO/U, as prescribed by the DLGF) the county assessor for the county where the tangible property is located of the change in ownership or use in the year that the change occurs.



Changes in Ownership or Use

- If the county assessor discovers that title to or use of property granted an exemption under IC 6-1.1-10 has changed, the county assessor must notify the persons entitled to a tax statement under IC 6-1.1-22-8.1 for the property of the change in title or use and indicate that the county auditor will suspend the exemption for the property until the persons provide the county assessor with an affidavit, signed under penalties of perjury, that identifies the new owners or use of the property and indicates whether the property continues to meet the requirements for an exemption under IC 6-1.1-10. Upon receipt of the affidavit, the county assessor must reinstate the exemption under IC 6-1.1-15-12. However, a claim under IC 6-1.1-26-1 for a refund of all or a part of a tax installment paid and any correction of error under IC 6-1.1-15-12 must be filed not later than three years after the taxes are first due.



Changes in Ownership or Use

HOWEVER:

- SEA 420-2014 added IC 6-1.1-11-1.5, which provides that an award of a property tax exemption for a particular assessment date **beginning after December 31, 2015 (or December 31, 2016 for mobile homes assessed under IC 6-1.1-7) must be based on the property's eligibility for the exemption on that assessment date. An act occurring after the assessment date, including a change in:**
 - (1) use, value, character, or ownership of the tangible property; or
 - (2) the age, disability, or income of any owner, contract buyer, or possessor of tangible property;does not affect the eligibility of the tangible property for an exemption for that assessment date.
- Example: *A property tax exemption is applied to a charitable organization's building for the January 1, 2016, assessment date. On November 1, 2016, the charitable organization sells the building to a startup, for-profit business. The exemption on that building remains for the January 1, 2016 assessment date.*



Changes in Ownership or Use

IN SUM:

For 2014 and 2015 (and 2016 for mobile homes), if a property is transferred or its use is changed so that it is no longer eligible for an exemption under IC 6-1.1-10, the exemption is removed for that year's assessment date. Starting in 2016, if non-mobile home property receiving an exemption is transferred or its use changed so that it is no longer eligible for an exemption under IC 6-1.1-10, the exemption will remain in place for that year's assessment date. Starting in 2017, if a mobile home property receiving an exemption is transferred or its use changed so that it is no longer eligible for an exemption under IC 6-1.1-10, the exemption will remain in place for that year's assessment date. If the General Assembly makes any additional changes to these laws in 2015, the DLGF will distribute information accordingly.

Note that SEA 420-2014 also amended IC 6-1.1-11-3.5 to provide that, ***after December 31, 2015, a non-profit corporation that receives an exemption for a particular year but which becomes ineligible for the following year must notify the county assessor before April 1 of the year for which it becomes ineligible. Also, after December 31, 2015, if part or all of a non-profit corporation's property becomes ineligible due to a change in use, the non-profit corporation must notify the county assessor before April 1.***



Granting an Exemption

In order to grant an application for an exemption, in whole or in part, the county PTABOA must find that the statutory prerequisites for an exemption have been met. If any of the statutory prerequisites have not been met, the exemption cannot be granted.

If the application is denied in whole or in part, notice of that action will be given on Form 120 (link: <https://forms.in.gov/Download.aspx?id=5600>).

An applicant may appeal to the Indiana Board of Tax Review ("IBTR") within thirty (30) days from the date the notice of rejection is given by the county PTABOA.

Note: IC 6-1.1-11-7(c) states the appeal must be filed within 30 days. The IBTR website and rules, following IC 6-1.1-15-3, state an appeal can be filed within 45 days of the notice of rejection.



Granting an Exemption

Exemption may include real property, personal property, or both.

Exemption amount may be 100%, or a certain percentage, depending on the circumstances.

Taxpayer must submit evidence that the property qualifies for exemption under a specific statute.

Failure to provide documentation such as articles of incorporation, by-laws, and income and expense statements, may result in the denial of the exemption sought.



Exemptions meet Deductions

IC 6-1.1-12-46:

For an assessment date in 2011 or later, if:

1. Real property is not exempt on March 1;
 2. Title is transferred before December 31; and
 3. The new owner applies for an exemption for the next assessment date and the county PTABOA determines the new owner qualifies for the exemption;
- for the non-exempt assessment date, any deductions and related tax cap credits should be applied to the property such that the exempt property will benefit.



Exemptions meet Deductions

Example:

John Smith owns a property as of March 1, 2013, and is eligible to receive the homestead and mortgage deductions on this property. The property is not exempt for the March 1, 2013, assessment date. John Smith sells his property to a church on or before December 31, 2013. The church applies for an exemption for the March 1, 2014, assessment date and the PTABOA determines it is exempt for the March 1, 2014, assessment date. The church will receive John Smith's deductions for the 2013-pay-2014 property taxes, as well as the property tax cap that would have been applied to the property under John Smith's ownership. The church's exemption will apply for the 2014-pay-2015 property taxes.

(See DLGF's May 19, 2011, memo: [http://www.in.gov/dlgf/files/110519 - Stanley Memo - Exemptions HEA 1004-2011.pdf](http://www.in.gov/dlgf/files/110519_-_Stanley_Memo_-_Exemptions_HEA_1004-2011.pdf))



Additional 2014 Legislative Changes



Business Personal Property (“BPP”) Exemptions (SEA 001)

County option exemptions:

- On BPP with an acquisition cost under \$20,000.
- On all new BPP.

Applies July 1, 2015



Business Personal Property Exemptions (SEA 001)

“Business personal property”

- Used in a trade or business; or
- Held, used, or consumed with production of income; and
- Either
 - acquired in an arms length transaction from an entity unaffiliated with the taxpayer, if previously used in Indiana; or
 - acquired in any manner, if never previously used in Indiana.
- Includes personal property owned by telephone or communications companies.
- Does not include mobile homes, investment properties, or public utility properties.



Business Personal Property Exemptions (SEA 001)

Under \$20,000 BPP Exemption (IC 6-1.1-3-7.2)

- COIT council must adopt ordinance.
- Public hearing before adoption; IC 5-3-1 applies.
- Copies of ordinance to DLGF & county auditor.
- Exempts BPP with an acquisition cost < \$20,000 for a particular assessment date. (In other words, the total acquisition cost of all the applicant's BPP had to be less than \$20,000 for a particular assessment date.)
- No personal property tax return required.
- Taxpayer must file annual certified statement with assessor, subject to \$25 penalty.



Business Personal Property Exemptions (SEA 001)

New BPP Exemption (IC 6-1.1-10.3)

“New business personal property”

- Taxpayer places in service after the ordinance is adopted or after a date specified in the ordinance.
- Not previously been used in Indiana before acquisition.



Business Personal Property Exemptions (SEA 001)

New BPP Exemption (IC 6-1.1-10.3)

- COIT council must adopt ordinance.
- Public hearing before adoption; IC 5-3-1 applies.
- Copies of ordinance to DLGF & county auditor.
- Exempts all new BPP.
- BPP already placed in service or previously used in Indiana as of adoption date or effective date is still taxed.
- COIT council may repeal or amend ordinance, but any BPP that was exempt due to ordinance remains exempt.
- No application or personal property tax return required.



Early Childhood Education Services Exemption (SEA 158)

For-profit providers of early childhood education services.

- Services to children 4 & 5 years old; if serving younger children as well, exemption is proportional to enrollment count of 4 & 5 year olds.
- Enrollment count on the assessment date or closest business day.
- Owner-provider may appeal the count on that date if it does not represent the normal enrollment count for that year.
Appeal must be filed no later than the IC 6-1.1-10-16 deadline.
- Successful appeal, assessor assigns an alternate date to be used for that year.



Early Childhood Education Services Exemption (SEA 158)

Requirements

- Primary educational purpose.
- Provider owns & predominantly occupies & uses the property.
- Provider participates in the early education evaluation program (see IC 12-17.2-3.8).
- Attains a Level 3 or Level 4 Paths to QUALITY program rating (or equivalent, nationally recognized rating).



The Oaken Bucket Case



The Oaken Bucket Case

HAMILTON COUNTY PROPERTY TAX ASSESSMENT BOARD OF APPEALS & HAMILTON COUNTY ASSESSOR v. OAKEN BUCKET PARTNERS, LLC, 938 N.E.2d 654 (Ind. 2010), is a Indiana Supreme Court decision that counties should take heed of when reviewing property tax exemption applications filed by landlords who rent to religious or charitable organizations.



What's in this *Oaken Bucket*?

Some of the key points from the case:

1. In order to qualify for an exemption, the landlord must demonstrate a unity of ownership, occupancy, and use. That is, that the property
 - a) is owned for exempt purposes,
 - b) occupied for exempt purposes, and
 - c) predominantly used for exempt purposes.When unity of ownership, occupancy, and use is lacking, both the landlord and tenant must demonstrate that they possess their own exempt purpose.
2. Charging below market rent for part of a building rented to a church or other religious or charitable organization is insufficient, standing alone, to justify a religious or charitable purpose property tax exemption.
3. Although the fact that a landlord charges below market rent to a charitable or religious organization may demonstrate some indicia of the landlord's beneficent motives, more is required to show the landlord has its own exempt purpose.



What's in this *Oaken Bucket*?

In essence, charging below market rent to an exempt entity does not, without more, establish an exempt purpose on the part of the property owner.



Exemptions and Nursing Homes



On Exempting Nursing Homes

Over the past several years, debate has brewed over whether nursing home facilities should be exempt.

On February 16, 2012, the Indiana Tax Court issued a decision involving the Tipton County Healthcare Foundation, Inc., f/k/a Tipton County Memorial Hospital Foundation, versus the Tipton County Assessor (see <http://www.in.gov/judiciary/opinions/pdf/02161201mbw.pdf>).



On Exempting Nursing Homes

Some key general holdings of the case that counties should take into consideration when reviewing property tax exemptions filed by nursing homes:

1. The sole issue in this case was whether the Foundation failed to raise a prima facie case that its assisted living facility is entitled to a charitable purposes property tax exemption under IC 6-1.1-10-16.



Revisiting *Oaken Bucket*

2. IC 6-1.1-10-16 provides that “[a]ll or part of a building is exempt from property taxation if it is owned, occupied, and used by a person for educational, literary, scientific, religious, or charitable purposes.”
 - Unity of ownership, occupancy, and use is not required under IC 6-1.1-10-16.
 - But when this unity is lacking, each entity must demonstrate that it has its own exempt purpose and explain the connection between that purpose and its ownership, occupancy, and use of the property.
3. It has long been held that exemption statutes are to be strictly construed against the taxpayer. Therefore, the burden is on the taxpayer to establish its right to an exemption.



Charity Begins at (the Nursing) Home

4. To qualify for a charitable purposes exemption, a taxpayer must show “obviously charitable acts different from the everyday purposes and activities of man in general” which are manifest in the relief of a person's needs.

Indeed, a charitable purpose is accomplished “by meeting the needs of the aging, namely, relief of loneliness and boredom, decent housing that has safety and convenience and is adapted to their age, security, well-being, emotional stability, and attention to problems of health....”



Charity Begins at (the Nursing) Home

5. IC 6-1.1-10-16 requires not simply the accomplishment of good and noble deeds, but the showing of a charitable purpose. This ensures that:
 - 1) The benefit that the exemption confers relieves government of a cost it would otherwise bear.
 - 2) The exemption's largess does not primarily fulfill a commercial profit motive.
6. Although an entity's for-profit status alone is not sufficient to show that a lease arrangement will result in private benefit, its status is germane.



Keep in mind:

7. While the Tax Court ruling is informative for when reviewing a property tax exemption for a nursing home, each situation stands on its own merits (i.e., the applicant's situation may not be analogous to the recent ruling).

Neither the language of one case nor an apparent trend from several cases has established a per se rule that an assisted living facility that cares for the elderly is automatically considered exempt by the mere character of its deeds.



Remember:

Every exemption case stands on its own facts and, therefore, is not susceptible to bright-line tests or other abbreviated inquiries.



Thank you!

Mike Duffy, Staff Attorney

317-233-9219

mduffy@dlgf.in.gov (preferred)